

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7536

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY EARL MILLER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry F. Floyd, District Judge. (6:06-cv-00548-HFF)

Submitted: March 5, 2010

Decided: March 30, 2010

Before NIEMEYER, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Henry Earl Miller, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Earl Miller appeals the district court's text order denying his "motion/request for clarification as to how defendant's singular and exact same offense of 'collecting money' during the commission of armed bank robberies can serve duplicitously as both aiding and abetting [18 U.S.C.] § 2113(d) [(2006)] and aiding and abetting [18 U.S.C.A.] § 924(c) [(West 2006 & Supp. 2009)]," "motion/request for application of the rule of lenity to this case," "motion to apply [United States] v. Carden, 599 F.2d 1320 (4th Cir. 1979)¹ to defendant's case," "motion for resentencing based on the Fifth Amendment's prohibition against multiple punishments for the exact same offense," and "motion for resentencing based on the retroactive holding in Bailey v. [United States], 516 U.S. 137 (1995)² concerning the 'use' prong of 18 U.S.C. § 924(c)."

The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a

¹ In Carden, this court discussed the standards applied to a motion to withdraw a guilty plea.

² The Supreme Court in Bailey held that a conviction under the applicable version of § 924 required a showing of active employment of a firearm by the defendant. Bailey, 516 U.S. at 143.

constitutional right.” 28 U.S.C. § 2253(c)(2) (2006). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Miller has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

We also deny Miller’s motions to address counsel’s failure to file a notice of appeal, to accept apology, and for clarification. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED